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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,977	01/04/2002	Johannes Cornelis Blonk	F7453(V)	4398

201 7590 09/30/2005

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/889,977

Applicant(s)

BLONK ET AL.

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The after-final amendment filed June 20, 2005 was entered and addressed in the Advisory Action of July 7, 2005.

### ***Claim Rejections - 35 USC. 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 13-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 13 recites "a springiness... comparable with that of cooked untreated rice". It is not clear what level of "springiness" would be considered "comparable".
5. Claim 13 recites "a firmness... comparable with that of cooked untreated rice". It is not clear what level of "firmness" would be considered "comparable"

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 13-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greethead [Pat. No. 4,478,862] view of Takao Heki et al [Pat. No. 3,701,667].

Greethead teaches a method of making a rice product with a microporous structure (column 2, line 60), a preparation time of less than 8 minutes (column 1, line 15), a lack of grittiness, a normal density of 0.8-0.85 kg/l (column 3, line 1), a final density of 0.3-0.6 kg/l (column 3, line 6), a lack of broken kernels, milled or polished rice (column 1, line 9), heat treatment in an annular, fluidized, swirling, toroidal bed (Figure 1, #1-3), a lack of transverse crack and holes greater than 500 microns, the air being at 100-600°C (column 3, line 40), a treatment time of 2-30 seconds (column 2, line 54), a starting water content of 13% (column 6, line 10), an air blower (column 4, line 11), and recirculating gas (Figure 1, #16). Properties such as "springiness", "pore distribution", "colour", "cracks", "rim", and "internal sponge" would have inherently been possessed by the product of Greethead due to the use of identical materials and treatment parameters. Greethead does not recite the rotational speed of the blower, namely at less than 60 Hz (claim 20), an air velocity of less than 50 m/s (claim 18), or whether rice is added in batches or continuously (claim 13). Takao Heki et al teach a process for heating rice in a fluidized, annular bed (Figure 1, #1) by adding the rice in batches (column 6, lines 5-20) and an air speed of less than 20 m/s (column 5, line 13). It would have been obvious to one of ordinary skill in the art to incorporate the air speed of Takao Heki et al into the invention of Greethead since both are directed to methods of heating rice, since Greethead already included a fluidized bed of air (Figure 1, #1-3), and since air moving at less than 20 m/s was commonly used for heating rice, as shown

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by Takao Heki et al (column 5, line 13). It would have been obvious to one of ordinary skill in the art to operate the blower of Greethead, in view of Takao Heki et al, at less than 60 Hz since this speed would have been attempted during the course of normal experimentation, since Greethead simply does not state what speed was used, and since Takao Heki et al already teaches using air at less than 20 m/s (column 5, line 13). It would have been obvious to one of ordinary skill in the art to use Greethead as a batch process, in view of Takao Heki et al, since both are directed to methods of heating rice, since Greethead does not specify whether a batch process or a continuous process was used, and since a batch process, such as that taught by Takao Heki et al, would have provided the benefit of averting clogs in the system due to trapped or accumulating rice kernels.

### ***Response to Arguments***

8. Applicant's arguments filed August 19, 2005 have been fully considered but they are not persuasive.

Applicant argues that springiness and firmness "comparable to with that of cooked untreated rice" was definite. However, it is not clear what degree of comparability would meet this requirement. Do they need to be identical? Do they need to be within a certain range, such as 50%?

Applicant argues that the use of a batch process resulted in a different product compared to a continuous process. However, applicant has not provided any evidence of this. Regarding the issue of continuous versus batch processes, MPEP 2144.14

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states: In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.

Regarding Greethead, applicant's attorney argues that he "has been informed" that the process of Greethead gives different results. However, applicant provided no factual evidence of this conclusion.

### ***Conclusion***

9. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DREW BECKER  
PRIMARY EXAMINER

9.27.05